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SUPREME COURT, U.S.

No. 06-170

In the Supreme Court of the United States

ANDREW LOCKHART, PETITIONER,

v.

NEDRA CHANDLER, WARDEN, RESPONDENT.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

BRIEF IN OPPOSITION

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QUESTION PRESENTED

Whether the Seventh Circuit correctly held that habeas relief may be granted pursuant to 28 U.S.C. § 2254(d)(1) only if the state court adjudication of petitioner's claim was contrary to or an unreasonable application of United States Supreme Court precedent?

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BRIEF IN OPPOSITION

Respondent, Nedra Chandler, respectfully requests that the Court deny the petition for a writ of certiorari filed by petitioner, Andrew Lockhart. The petition seeks review of the judgment of the United States Court of Appeals for the Seventh Circuit, affirming the judgment of the United States District Court for the Northern District of Illinois, which denied petitioner habeas corpus relief pursuant to 28 U.S.C. § 2254.

STATEMENT

On April 4, 1993, petitioner broke into his estranged wife's apartment and, after speaking with her for an hour, shot her. Pet. App. 2. As she was lying on the ground, petitioner shot her again at close range, killing her. *Ibid.* On August 13, 1993, petitioner pled guilty to murder in Illinois state court and was sentenced to 35 years in prison. Pet. App. 7. By statute, Illinois imposes a mandatory three-year period of supervised release (MSR) to follow a prison sentence for murder. 730 ILCS 5/5-8-1(d). Petitioner never sought to withdraw his guilty plea. *See* Pet. App. 2. Instead, by collateral attack in state court, he asked that his MSR be either removed or incorporated into his 35-year prison sentence.

Pursuant to 28 U.S.C. § 2254, petitioner sought habeas relief, on the ground that the judge who accepted his guilty plea failed to advise him about MSR at the plea proceeding. Pet. App. 8. The district court held that petitioner merely alleged a violation of Illinois Supreme Court Rule 402, which requires an Illinois trial court to inform a defendant at a guilty plea of the nature of the charge, the minimum and maximum sentences, and the various rights the defendant waives by pleading guilty. Accordingly, the district court denied habeas relief, reasoning that, although petitioner attempted to state a due process violation, he failed to allege that his guilty plea was not

knowing and voluntary, and the sentencing judge's failure to inform petitioner of the mandatory supervised release period did not establish a *per se* constitutional violation. Pet. App. 8.

The Seventh Circuit disagreed with the district court that petitioner had failed to raise a federal due process claim. Pet. App. 3-4. However, the court affirmed the district court's decision to deny habeas relief, holding that no United States Supreme Court precedent existed clearly establishing a federal constitutional right to be informed of the mandatory supervised release period. Pet. App. 6. The Seventh Circuit grounded its holding on *Lane v. Williams*, 455 U.S. 624, 630 n.9 (1982), which stated: "We do not decide whether to establish such a constitutional violation, respondents must claim that they in fact did not know of the parole requirement at the time they pleaded guilty or that they would not have pleaded guilty had they known of this consequence." *See also* Pet. App. 5 (citing *Shabazz v. Perlman*, No. 04 Civ. 4355, 2005 WL 2105533, at *6 (S.D.N.Y Sept. 1, 2005) (explaining that the district court was "unable to find any Supreme Court case that requires a state court judge to advise a defendant of mandatory post-release supervision before accepting a guilty plea"); and *Lustyk v. Murray*, No. 03-CV-6186L, 2004 WL 1949473, at *2 (W.D.N.Y. Aug. 30, 2004) (explaining the district court could not find, nor could petitioner cite, to any Supreme Court case holding that a mandatory term of parole or post-release supervision is a direct consequence of a guilty plea)). The court explained that petitioner's reliance on Illinois cases and federal cases decided before the effective date of the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA) was misplaced: "Pointing to mostly pre-AEDPA cases from this circuit as well as from Illinois is a far cry from showing the state court contradicted, or unreasonably applied, clearly established law *as determined by the Supreme Court*, which [petitioner] is required to do." Pet. App. 4 (emphasis in original).

Petitioner now seeks a writ of certiorari.

REASONS FOR DENYING THE PETITION

Petitioner seeks review of the Seventh Circuit's determination that petitioner failed to show that the state court's judgment violated a clearly established federal constitutional right. He argues that the Seventh Circuit held that in considering petitions for habeas relief under AEDPA, federal courts are barred from considering lesser federal court and state court precedent. The Seventh Circuit did no such thing. Rather, it held only that "we (and state supreme courts) do not have the authority in these types of cases to establish new constitutional rights." Pet. App. 6. In other words, the Seventh Circuit held that it could not look to its own precedent, or state court precedent, as having established "clearly established federal law as determined by the Supreme Court of the United States." 28 U.S.C. § 2254(d)(1).

The question petitioner presents to the Court is much broader: "[T]he current petition seeks to fill in the larger picture by addressing the question of what body of law can federal courts consider when determining if a state court decision is an unreasonable application of federal law as announced by this Court." Pet. 10-11. Because the issue presented was not decided by the Seventh Circuit, and the circuit's law on that subject does not create a split in the courts of appeals, certiorari review should be denied, and the instant petition should neither be granted nor held pending the disposition of *Carey v. Musladin*, No. 05-785. *See* Robert L. Stern, et al., *Supreme Court Practice* 459-60 (8th ed. 2002) ("In a surprisingly large number of cases every year, the petition raises questions that were not decided by the court below because they were not raised, or seriously mischaracterizes the holding of the court. Demonstrations of such a defect is ordinarily fatal to the petition.").

Petitioner describes the issue presented in unduly broad terms. Petitioner asks whether federal courts have the "authority, when determining whether a petitioner is entitled to a writ of habeas corpus pursuant to 28 U.S.C. § 2254, to consider decisions of the federal courts of appeal and state supreme courts that had applied clearly established precedent of this Court" (Pet. i), and "what body of law a federal court may consider when determining if a state court decision is an unreasonable application of federal law as announced by this Court." Pet. 11. However, that issue was neither presented to nor answered by the Seventh Circuit. The Seventh Circuit merely held that it could only consider Supreme Court precedent when identifying federal law for purposes of 28 U.S.C. § 2254(d)(1). The Seventh Circuit ruled that because this Court in *Lane* expressly declined to reach the issue presented by petitioner's case, there was no clearly established federal law as determined by this Court; it never decided the relevant body of law to determine the reasonable application of the Court's precedents.

The Seventh Circuit's reasoning and holding were entirely consistent with earlier Seventh Circuit decisions that help illuminate the distinction between the issue petitioner presents here and the issue actually decided by the court below. The Seventh Circuit has held that under AEDPA, it may look only to this Court's precedents to identify clearly established federal law for purposes of § 2254(d)(1), but that it may look to other court rulings as persuasive precedent regarding the reasonable application of that law. See *Easley v. Frey*, 433 F.3d 969, 974 (7th Cir. 2006); *Jackson v. Frank*, 348 F.3d 658, 665 (7th Cir. 2003) ("Although the only definitive source of clearly established federal law under the AEDPA is Supreme Court authority, the determination by one of our sister circuits that a misstatement of state law alone does not vitiate a *Miranda* waiver certainly makes it more difficult to conclude that the

Wisconsin Court of Appeals unreasonably applied Supreme Court authority.") (internal citation omitted).

Thus, petitioner relies on his vague and overly broad description of the issue presented to assert a circuit split where none exists. The Seventh Circuit's rule, applied in this case, that it may only look to Supreme Court precedent in determining established federal law under AEDPA is consistent with *Williams v. Taylor*, 529 U.S. 362, 412 (2000), and is not inconsistent with the decisions relied upon by petitioner to establish the alleged split. For example, as petitioner notes, "[t]he First Circuit has stated that, while federal court of appeals' decisions are not clearly established for the purposes of Section 2254(d)(1) because they do not issue from the Supreme Court, they provide significant insight on what constitutes reasonableness for a particular fact pattern." Pet. 8-9 (citing *Phoenix v. Matesanz*, 233 F.3d 77, 83 n.3 (1st Cir. 2000)) (internal quotations omitted). The First Circuit's rule is precisely consistent with the Seventh Circuit's rule, as stated in *Jackson* and *Easley*, and applied in this case. The same is true regarding the Third and Sixth Circuits, with which petitioner also claims the Seventh Circuit is in conflict. *See Chadwick v. Janecka*, 312 F.3d 597, 613 (3d Cir. 2002) (Alito, J.) ("It is true that federal habeas courts are not precluded form considering the decisions of the inferior federal courts when evaluating whether the state's court application of the law was reasonable. But this Court has clearly stated that decisions by lower federal courts may be considered only as helpful amplifications of Supreme Court precedent.") (internal quotations omitted); *Hill v. Hofbauer*, 337 F.3d 706, 716 (6th Cir. 2003) ("Although only Supreme Court case law is relevant under the AEDPA in examining what Federal law is clearly established, the decisions of the United States Courts of Appeals may be informative to the extent we have already reviewed and interpreted the relevant Supreme Court case law to determine whether a legal

principle or right had been clearly established by the Supreme Court.") (internal quotations omitted).

The Seventh Circuit and Ninth Circuit are in conflict presently about whether a federal court may look to inferior courts' decisions to determine "what law is clearly established." *See Musladin v. Lamarque*, 427 F.3d 653, 655 (9th Cir. 2005), *cert. granted, Carey v. Musladin*, 126 S. Ct. 1769 (2006). But this case did not create that split. More importantly, petitioner makes clear that this is not the question presented by his certiorari petition, which is "what body of law can federal courts consider when determining if a state court decision is an unreasonable application of federal law as announced by this Court." Pet. 10-11. There is no inconsistency between the Seventh and Ninth Circuit's rule on this issue. *Compare Musladin*, 427 F.3d at 655 ("Nevertheless, we recognize that precedent from this court, or any other federal circuit court, has persuasive value in our effort to determine whether a particular state court decision is an unreasonable application of Supreme Court law.") (internal quotations omitted) *with Jackson*, 348 F.3d at 665 (holding that a determination by a federal court of appeals is persuasive authority in determining whether a state court unreasonably applied Supreme Court authority). Because the issue petitioner would have the Court resolve is not that posed by *Musladin*, there is no reason to defer determination of the instant petition until after that case is decided.

Finally, the Seventh Circuit correctly held under this Court's precedent that there is no clearly established federal law guaranteeing a defendant the right to be informed at a guilty plea about a mandatory supervised release period. The Court explicitly declined to reach that question in *Lane*, 455 U.S. at 630 n.9 ("We do not decide whether, to establish such a constitutional violation, respondents must claim that they in fact did not know of the parole requirement at the time they pleaded guilty or that they would not have pleaded guilty had they

known of this consequence."). Petitioner argues that he is entitled to relief under the clearly established federal law that a guilty plea must be knowing and voluntary. See *Santobello v. New York*, 404 U.S. 257, 262 (1971); *Brady v. United States*, 397 U.S. 723, 748 (1970); *Boykin v. Alabama*, 395 U.S.238, 242-44 (1969). However, petitioner has never shown that his plea was not knowing and voluntary, or that he would not have pleaded guilty if he had known about MSR, alleging merely that he was not informed of the mandatory supervised release period. Because this Court has declined to establish a right to be informed of a period of supervision like that imposed here, the Seventh Circuit correctly held that petitioner was not entitled to habeas relief.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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